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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,271	11/16/2001	Kimberly Ann Mudar	D-43397-02	7690

7590 07/12/2005

Rupert B. Hurley Jr.
Sealed Air Corporation
P.O. Box 464
Duncan, SC 29334

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,271

Applicant(s)

MUDAR ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-27 is/are pending in the application.
4a) Of the above claim(s) 12,24 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-11, 13-23 and 25-27 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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Responsive to the communication filed 1/10/05, Claim 24 is withdrawn from further consideration as being drawn to a non-elected invention.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13-23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luthra et al (WO 99/00250) in view of Noel et al ('287), essentially for the reasons given in the Office action mailed 3/29/04.

In regard to claim 1, which now recites that the added liquid comprises brine, it is noted that this issue was addressed in the last Office Action. That is, the examiner takes notice, and the art, including applicants admission of the prior art, teaches that it was notoriously well known to provide a food product with added liquid "thereon" which added liquid comprises brine. To modify Luthra et al and provide a conventional brined moist product would therefore have been obvious. In regard to new claims 25, 26 and 27, applicants are obviously not the inventors of evacuated, shrink bags of fresh meat not end seal or side seal bags. These are notoriously conventional. Luther et al, e.g., discloses shrink film packaging. To modify the combination, if necessary, and provide a shrink bag, either end-sealed or side sealed, would have been an obvious result effective variable.

All of applicants' remarks filed 9/2/04 have been fully and carefully considered but are not found to be convincing. On page 8 of the remarks, it is urged that claim 1

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now differs from Luthra et al in that there is "added" liquid and the liquid comprises brine. As noted previously, Luthra et al teaches packaging for moist products including produce and cheese and fresh red meat. These products are called moist products because moisture will be exuded to the surface. It is again reiterated that moisture is moisture no matter what the source. The amendment seems to be urging that the degree of free or surface moisture will be greater when liquid is added. This urging is not convincing. The amount of moisture is, in fact, a matter of degree and an obvious function of several variables including the type of product, the size of product and the amount of liquid added. It is noted, for example, that the claim recite as little as a fraction of a percent by weight of added (claim 1) and even claim 1 only recites 1%. Also, the fact that brine is involved is not seen to be particularly significant, since cuts of fresh meat will exude blood, protein and salt material whether there has been added brine or not.

On page 9 of the amendment, it is urged that it would not have been obvious to include a slip agent in the seal layer of a package containing added liquid including brine. This urging is not convincing. Luthra et al does teach a heat seal layer including a slip agent for moist products including produce, cheese and meat (two of which are applicants disclosed products). Luthra et al is also concerned with fogging as well. The products of Luthra et al will exude liquids of varying compositions. To substitute one conventional moisture containing product for another conventional moisture containing product to, at the miniman, preserve the product and reduce fogging would have been obvious. It is noted that many of the claims do not even recite an amount of slip agent

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to prevent applicants' urged sealing problem, and, in the instances when amounts are recited they are present in conventional amounts. Thus, the film package of the Luthra et al reference would inherently have the capability of providing a stronger seal, whether the seal contaminating product is packaged or not, just because it has the recited slip agent. Stated somewhat differently, the packaged fresh meat of Luthra et al would inherently have a stronger seal than another package that contains fresh meat but did not have the slip agent in the seal layer. Note, too, in view of Luthra et al, slip agents, associated with seal layers, appear to be the rule, not the exception. One of ordinary skill in the art would be fairly led to provide a liquid brine added food in the packaging of Luthra et al; if for no other reason than for its antifogging properties. At best, the pending application appears to have made a new property observation for a conventional packaging material. Noel et al even mentions slip agents in combination with brine added meat products. It is urged that Noel et al doesn't say that they are in the seal layer, but silence is not damning in this case, since Luthra et al teaches that slip agents are conventionality associated with seal layers.

As for the urging of unexpected results, the tables in the specification compare packaging with and without slip agents, but Luthra et al does teach slip agents and does teach moist food products including fresh meat. The packaging seals of Luthra et al would inherently be stronger than the same packaging without the slip agents.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday thru Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761